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Byron Y. Yafuso

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EXAMINER

NGUYEN, BRIAN D

ART UNIT

PAPER NUMBER

2472

NOTIFICATION DATE

DELIVERY MODE

03/17/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 09/881,410 | Applicant(s) YAFUSO ET AL. | |
| | Examiner BRIAN D. NGUYEN | Art Unit 2472 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22, 40, 43, 44, 51-59, 66-70 and 77-86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-11, 21 and 22 is/are allowed.
- 6) ☒ Claim(s) 40, 43, 44, 51-59, 66-70 and 77-86 is/are rejected.
- 7) ☒ Claim(s) 12-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 12-20, 44, and 66-70 are objected to because of the following informalities:

Claim 12, line 2, it is suggested to replace “said member telephone sets” with “said member user telephone sets”.

Claim 13, line 3, it is suggested to replace “said member telephone sets” with “said member user telephone sets”.

Claim 14, line 2, it is suggested to replace “said member telephone sets” with “said member user telephone sets” and line 3 replace “a selected member telephone set” with “a selected member user telephone set”.

Claim 15, lines 2 and 3, it is suggested to replace “said member telephone sets” with “said member user telephone sets”.

Claim 16, line 15, it is suggested to replace “said eligible member telephone sets” with “said eligible member user telephone sets”.

Claim 19, line 2, it is suggested to replace “said active member telephone set” with “said active eligible member user telephone set”.

Claim 44, line 6, “[private]” should be deleted. Line 11, it is suggested to insert “network” after “the point-to-multipoint”.

Claim 66, line 9, it is suggested to insert "with" before "at least".

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 66-70 and 86 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The limitation “A computer readable medium tangibly embodying a program of machine-readable instructions executable by a digital processing apparatus” in claims 66-70 and “a predetermined limit” were not described in the specification

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 40, 43, and 59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 40 recites the limitation "the wireless communication system" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 59 recites the limitation "the private communication system" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 77-86 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The method claims 77-86 are not (1) tied to a particular machine or apparatus, or (2) transforms a particular article to a different state or thing.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 40, 44, 51-53, 59, 66-68, and 77-79 are rejected under 35 U.S.C. 102(e) as being anticipated by Kay et al (5,475,689).

Regarding claim 40, Kay discloses a network call manager, comprising: a network controller (CAP, SIM, and STM in figure 2) operative to cause data packets transmitted within the wireless communication system to be processed and routed, the network controller storing therein at least one list of members of at least one push-to-talk (PTT) private network (see table 1 in col. 8, lines 40-67); and a PTT controller operative to cause PTT requests and private network data packets to be processed and routed in accordance with the at least one list (col. 7, lines 3-55)

Regarding claim 44, Kay discloses a wireless communication system comprising a network call manager for facilitating communications simultaneously among a plurality of

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mobile devices of a communication group of wireless devices (see table 1 in col. 8), the communications group comprising a push to talk (PTT) network (figure 1), the network call manager comprising: means for receiving a point-to-point transmission comprising a plurality of voice data packets and a point-to-multipoint transmission comprising a plurality of network data packets (col. 2, line 56-59 and CAP, SIM in figure 2); means for directing point-to-point transmissions (CAP, SIM, and STM in figure 2); means for receiving a request from any member of the communications group, the request for a point-to-multipoint transmission to the communications group (col. 7, lines 3-16 and col. 8, table 1); and means for directing (CAP, SIM, STM) the point-to-multipoint data packets exclusively from a current active member (MS 7 in col. 8, line 63-col. 9, line 7) of the communications group to other members of the communications group in response to the request (col. 8, lines 40-67).

Regarding claim 51, Kay discloses a network call manager (SAM, SIM, STM, and gateway 40) for enabling push-to-talk (PTT) communications to a communication group of wireless devices (figure 1), comprising: an interface to a public switched telephone network for receiving interleaved vocoder frames and PTT frames from a first member user (see BSC connected to PSTN in figure 1 and STM connected to MSC in figure 2. See mobile dispatch station in col. 8, line 35-col. 9, line 13 and non-mobile dispatch station in col. 9, lines 24-42 and col. 3, lines 44-49); a switch for providing the received vocoder frames to at least a second member user and a third member user (see members in table 1); and a PTT controller for configuring the switch based on a PTT request contained in one or more of the PTT frames (col. 8, line 35-col. 9, line 13 and col. 9, lines 25-42).

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Regarding claim 52, Kay discloses the PTT controller is further for establishing individual forward links with the second member user and the third member user, respectively, through the interface (see point-to-point in col. 2, line 57).

Regarding claim 53, Kay discloses a network controller for paging the second member user and the third member user after the PTT request is received (see dispatch setup in figure 5).

Regarding claim 59, Kay discloses authenticating a member user to the private communication network (col. 6, lines 59-60)

Regarding claims 66 and 77, Kay discloses a computer readable medium tangibly embodying a program of machine-readable instructions executable by a digital processing apparatus to perform a method for enabling push-to-talk (PTT) communications between member devices of a PTT group communicating through a public switched telephone network, the method comprising operations of: receiving at least one PTT frame (dispatch setup) and vocoder frames (PTT/voice frame) from a member of a PTT communication network (see table 1 in col. 8) through a public switched telephone network (see figure 1 for network configuration and figure 5 for processing a PTT request and col. 3, lines 44-49 where the dispatch initiator operate from a station connected in PSTN)); granting a speaker privilege to the member in response to a PTT request contained within the at least one PTT frame (see setup and ASGN in figures 4 and 5); establishing at least one forward communication link with the at least two other members of the PTT communication network (see point-to-multipoint in col. 2, line 57); and providing the at least one PTT frame and vocoder frames from the member to the at least two other members of the PTT communication network through the at least one forward communication link (col. 7, lines 54-55).

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Regarding claims 67 and 78, Kay discloses configuring a switch to route the vocoder frames to at least two other members of the PTT communication network (see SIM-1 in figure 2).

Regarding claims 68 and 79, Kay discloses authenticating the member prior to granting the speaker privilege (see col. 6, lines 59-60).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 43, 58, 70, 81, 84, and 86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kay in view of Grube et al (5,387,905).

Regarding claim 43, Kay does not specifically disclose push-to-talk communications are processed according to an associated priority of each push-to-talk communication. However, Grube discloses this feature (see col. 4, lines 44-61). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to process a call based on the priority as taught by Grube in the system of Kay in order to improve quality of service.

Regarding claims 58, 70, and 81, Kay does not specifically disclose a queue for storing a second PTT request from the second member user, the second member user being granted a speaking privilege after the speaking privilege is no longer held by the first member user. However, Grube discloses a queue for storing a second request (see col. 5, lines 56-58).

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Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to queue the request as taught by Grube in the system of Kay so that the request can be process when resource is available.

Regarding claims 84 and 86, Kay does not specifically disclose storing a second PTT request and the use of priority for speaker privilege. However, Grube teaches these limitations (see col. 4, lines 44-61 and col. 5, lines 56-58). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a queue and priority as taught by Grube in the system of Kay in order to meet specific needs.

12. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kay in view of Danne et al (5,761,619).

Regarding claim 54, Kay discloses all the claimed subject matter as described in previous paragraph except for a modem. However, Danne discloses the use of modems (col. 9, lines 9-12). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use modems as taught by Danne in the system of Kay in order to modulate/demodulate data.

13. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kay in view of Weiss (5,151,922).

Regarding claim 55, Kay discloses all the claimed subject matter as described in previous paragraph except for a tone detector. However, Weiss discloses a tone detector (see 10 in figure 1). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a tone detector as taught by Weiss in the system of Kay in order to distinguish tone from other types of signals.

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14. Claims 56-57, 69, and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kay in view of Glaser (6,072,463).

Regarding claims 56-57, 69, and 80, Kay does not specifically disclose sending a list of current participating member users in an PTT communication to the first, second, and third member users. However, notifying a participating member of other participating members in a conference call is well known in the art. Glaser discloses this feature (see col. 6, lines 39-45). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to send a list of current participating member users to participating member users as taught by Glaser in the system of Kay in order to notify and assist each member of the conference call managing the call.

15. Claims 82-83 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kay in view of Grube as applied to claims 81 and 84 above, and further in view of Fernandes et al (5,612,955).

Regarding claims 82 and 83, Kay does not specifically disclose determining that the speaker privilege is no longer held by the member when the member releases engagement of a PTT switch and the speaker privilege is no longer held by the member upon occurrence of a pause of predetermined duration. However, Fernandes teaches this feature (see col. 4, lines 29-55). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to determine the speaker privilege as taught by Fernandes in the system of Kay in order to improve system efficiency.

Regarding claim 85, Kay does not specifically disclose when a PTT request is received from a member of higher priority than a currently active member, preempting the currently

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active member and granting the speaker privilege to the higher priority member. However, Fernandes teaches this feature (see col. 4, lines 48-55). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to preempting the currently active member as taught by Fernandes in the system of Kay in order to avoid delaying an important call.

Allowable Subject Matter

16. Claims 1-11 and 21-22 are allowed.
17. Claims 12-20 would be allowable if rewritten or amended to overcome the objections set forth in this Office action.

Response to Arguments

18. Applicant's arguments filed 11/16/09 have been fully considered but they are not persuasive.

Regarding claims 66-70, nowhere in the specification mentions a computer readable medium.

Regarding claims 77-86, the applicant argues that PTT communication network is a specific machine. This argument is not persuasive because the steps of the claims are performed by a network call manager that is not mentioned in the claims. The PTT communication network includes members and the members do not perform the steps of the claims.

Conclusion

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19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN D. NGUYEN whose telephone number is (571)272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on (571) 272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

3/9/10

/Brian D Nguyen/

Primary Examiner, Art Unit 2472